

Senate File 157 - Introduced

SENATE FILE _____
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DANIELSON, SODDERS, and
KREIMAN

Passed Senate, Date _____ Passed House, Date _____
Vote: Ayes _____ Nays _____ Vote: Ayes _____ Nays _____
Approved _____

A BILL FOR

1 An Act relating to wage payment collection issues arising between
2 employers and individuals who provide services to employers,
3 providing penalties, and including an effective date.
4 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF IOWA:
5 TLSB 2067XS 83
6 ak/rj/8

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1 1 Section 1. Section 91A.2, subsection 3, Code 2009, is
1 2 amended to read as follows:
1 3 3. "Employee" means a natural person who is employed in
1 4 this state for wages by an employer. Employee also includes a
1 5 commission salesperson who takes orders or performs services
1 6 on behalf of a principal and who is paid on the basis of
1 7 commissions but does not include persons who purchase for
1 8 their own account for resale.
1 9 a. For the purposes of this chapter, the following persons
1 10 engaged in agriculture are not employees:
1 11 a- (1) The spouse of the employer and relatives of either
1 12 the employer or spouse residing on the premises of the
1 13 employer.
1 14 b- (2) A person engaged in agriculture as an
1 15 owner-operator or tenant-operator and the spouse or relatives
1 16 of either who reside on the premises while exchanging labor
1 17 with the operator or for other mutual benefit of any and all
1 18 such persons.
1 19 c- (3) Neighboring persons engaged in agriculture who are
1 20 exchanging labor or other services.
1 21 b. In order to establish the absence of an employment
1 22 relationship, a putative employer has the burden to establish
1 23 all of the following:
1 24 (1) The putative employer and putative employee share the
1 25 intention to create an independent contractor relationship.
1 26 (2) The putative employer does not control or direct the
1 27 performance of services by the putative employee.
1 28 (3) The putative employer is not responsible for payment
1 29 of wages to the putative employee.
1 30 (4) The putative employer does not have the right to
1 31 discharge the putative employee or terminate the working
1 32 relationship with the putative employee.
1 33 (5) The putative employer is not the authority in charge
1 34 of the work or for whose benefit the putative employee is
1 35 providing services.
2 1 Sec. 2. Section 91A.2, subsection 6, Code 2009, is amended
2 2 to read as follows:
2 3 6. "Liquidated damages" means the sum of five percent
2 4 multiplied by the amount of any wages that were not paid or of
2 5 any authorized expenses that were not reimbursed on a regular
2 6 payday or on another day pursuant to section 91A.3 multiplied
2 7 by the total number of days, excluding Sundays, legal
2 8 holidays, and the first seven days after the regular payday on
2 9 which wages were not paid or expenses were not reimbursed.
2 10 However, such sum shall not exceed twice the amount of the
2 11 unpaid wages and shall not accumulate ~~when an employer is~~
~~2 12 subject to a petition filed in bankruptcy.~~

2 13 Sec. 3. Section 91A.6, subsections 1 and 2, Code 2009, are
2 14 amended to read as follows:
2 15 1. An employer shall ~~after being notified by the~~
2 16 ~~commissioner pursuant to subsection 2 do the following:~~
2 17 a. Notify its employees in writing at the time of hiring
2 18 what wages and regular paydays are designated by the employer.
2 19 b. Notify, at least one pay period prior to the initiation
2 20 of any changes, its employees of any changes in the
2 21 arrangements specified in this subsection ~~+~~ that reduce wages
2 22 or alter the regular paydays. The notice shall either be in
2 23 writing or posted at a place where employee notices are
2 24 routinely posted.
2 25 c. Make available to its employees upon written request, a
2 26 written statement enumerating employment agreements and
2 27 policies with regard to vacation pay, sick leave,
2 28 reimbursement for expenses, retirement benefits, severance
2 29 pay, or other comparable matters with respect to wages.
2 30 Notice of such availability shall be given to each employee in
2 31 writing or by a notice posted at a place where employee
2 32 notices are routinely posted.
2 33 d. Establish, maintain, and preserve for three calendar
2 34 years the payroll records showing the hours worked, wages
2 35 earned, and deductions made for each employee and any
3 1 employment agreements entered into between an employer and
3 2 employee. Failure to do so shall raise a rebuttable
3 3 presumption that the employer did not pay the required minimum
3 4 wage under section 91D.1.
3 5 2. ~~The commissioner shall notify an employer to comply~~
3 6 ~~with subsection 1 if the employer has paid a claim for unpaid~~
3 7 ~~wages or nonreimbursed authorized expenses and liquidated~~
3 8 ~~damages under section 91A.10 or if the employer has been~~
3 9 ~~assessed a civil money penalty under section 91A.12. However,~~
3 10 ~~a court may, when rendering a judgment for wages or~~
3 11 ~~nonreimbursed authorized expenses and liquidated damages or~~
3 12 ~~upholding a civil money penalty assessment, order that an~~
3 13 ~~employer shall not be required to comply with the provisions~~
3 14 ~~of subsection 1 or that an employer shall be required to~~
3 15 ~~comply with the provisions of subsection 1 for a particular~~
3 16 ~~period of time.~~
3 17 Sec. 4. Section 91A.8, Code 2009, is amended to read as
3 18 follows:
3 19 91A.8 VIOLATIONS BY EMPLOYER. DAMAGES RECOVERABLE BY AN
3 20 EMPLOYEE UNDER THIS CHAPTER.
3 21 1. A violation of this chapter shall occur any week when
3 22 an individual employee was not paid the legally required wages
3 23 under this chapter, state taxes were not withheld, or in the
3 24 case of improper discharge, discrimination, or retaliation
3 25 against an employee, every week after the improper discharge,
3 26 discrimination, or retaliation has occurred until compensation
3 27 is finally made.
3 28 2. When it has been shown that an employer has
3 29 ~~intentionally~~ failed to pay an employee wages or reimburse
3 30 expenses pursuant to section 91A.3, whether as the result of a
3 31 wage dispute or otherwise, the employer shall be liable to the
3 32 employee for ~~any the unpaid wages or expenses that are so~~
3 33 ~~intentionally failed to be paid or reimbursed,~~ plus liquidated
3 34 damages, court costs, and any ~~attorney's~~ attorney fees
3 35 incurred in recovering the unpaid wages and determined to have
4 1 been usual and necessary. ~~In other instances the employer~~
4 2 ~~shall be liable only for unpaid wages or expenses, court costs~~
4 3 ~~and usual and necessary attorney's fees incurred in recovering~~
4 4 ~~the unpaid wages or expenses.~~
4 5 Sec. 5. Section 91A.9, subsection 2, Code 2009, is amended
4 6 to read as follows:
4 7 2. a. The commissioner may, consistent with due process
4 8 of law, enter any place of employment to inspect records
4 9 concerning wages and payrolls, to question the employer and
4 10 employees, and to investigate such facts, conditions or
4 11 matters as are deemed appropriate in determining whether any
4 12 person has violated the provisions of this chapter. ~~However,~~
4 13 ~~such entry by the commissioner shall only be in response to a~~
4 14 ~~written complaint.~~
4 15 b. A complaining employee may submit a written request for
4 16 confidentiality of identifying information. Upon such
4 17 request, the commissioner shall determine if the commissioner
4 18 can effectively pursue the matter while keeping the identity
4 19 of the complaining employee confidential. If the commissioner
4 20 determines that an employee's identity must be disclosed in
4 21 order to effectively pursue the matter, the commissioner may
4 22 do so only with the employee's consent. Otherwise, the
4 23 commissioner shall keep the complaining employee's identity

4 24 confidential notwithstanding chapter 22.

4 25 Sec. 6. Section 91A.10, subsection 1, Code 2009, is
4 26 amended to read as follows:

4 27 1. a. Upon the written complaint of the employee
4 28 involved, the commissioner may determine whether wages have
4 29 not been paid and may constitute an enforceable claim. If for
4 30 any reason the commissioner decides not to make such
4 31 determination, the commissioner shall so notify the
4 32 complaining employee within fourteen days of receipt of the
4 33 complaint. The commissioner shall otherwise notify the
4 34 employee of such determination within a reasonable time ~~and if~~
4 35 ~~it is determined.~~

5 1 b. Without regard to whether the commissioner received a
5 2 written complaint from an employee or initiated an
5 3 investigation, if the commissioner determines that there is an
5 4 enforceable claim, the commissioner shall, with the consent of
5 5 the complaining employee, take an assignment in trust for the
5 6 wages and for any claim for liquidated damages ~~without being~~
5 7 ~~bound by any of the.~~ The technical rules respecting the
5 8 validity of the assignment shall not apply. However, the
5 9 commissioner shall not accept any complaint for unpaid wages
5 10 and liquidated damages after one year from the date the wages
5 11 became due and payable.

5 12 Sec. 7. Section 91A.10, subsection 5, Code 2009, is
5 13 amended to read as follows:

5 14 5. ~~An employer shall not discharge or in any other manner~~
5 15 ~~discriminate against any employee because the employee has~~
5 16 ~~filed a complaint, assigned a claim, or brought an action~~
5 17 ~~under this section or has cooperated in bringing any action~~
5 18 ~~against an employer. An employer or other person shall not~~
5 19 ~~discharge or in any other manner discriminate or retaliate~~
5 20 ~~against an employee or other person for exercising any right~~
5 21 ~~provided under this chapter or any rules adopted pursuant to~~
5 22 ~~this chapter, or against another employee or person for~~
5 23 ~~providing assistance to an employee or providing information~~
5 24 ~~regarding the employee or person, or for testifying or~~
5 25 ~~planning to testify in any investigation or proceeding~~
5 26 ~~regarding the employee or person. Taking adverse action~~
5 27 ~~against an employee or other person within ninety days of an~~
5 28 ~~employee's or other person's engaging in the foregoing~~
5 29 ~~activities raises a presumption that such action was~~
5 30 ~~retaliation, which may be rebutted by clear and convincing~~
5 31 ~~evidence that such action was taken for other permissible~~
5 32 ~~reasons.~~ Any employee may file a complaint with the
5 33 commissioner alleging discharge, ~~or discrimination, or~~
5 34 ~~retaliation~~ within thirty days after such violation occurs.

5 35 Upon receipt of the complaint, the commissioner shall cause an
6 1 investigation to be made to the extent deemed appropriate. If
6 2 the commissioner determines from the investigation that the
6 3 provisions of this subsection have been violated, the
6 4 commissioner shall bring an action in the appropriate district
6 5 court against such person. The district court shall have
6 6 jurisdiction, for cause shown, to restrain violations of this
6 7 subsection and order all appropriate relief including rehiring
6 8 or reinstatement of the employee to the former position with
6 9 back pay.

6 10 Sec. 8. Section 91A.10, Code 2009, is amended by adding
6 11 the following new subsection:

6 12 NEW SUBSECTION. 6. A civil action to enforce this section
6 13 may also be maintained in any court of competent jurisdiction
6 14 by the commissioner or by any party injured by a violation of
6 15 this section. An employer or other person who retaliates
6 16 against an employee or other person in violation of this
6 17 section shall be required to pay the person an amount set by
6 18 the commissioner or a court sufficient to compensate the
6 19 employee or other person and deter future violations, but not
6 20 less than one hundred fifty dollars for each day that the
6 21 violation continued.

6 22 Sec. 9. Section 91A.12, subsection 1, Code 2009, is
6 23 amended to read as follows:

6 24 1. Any employer who violates the provisions of this
6 25 chapter or the rules ~~promulgated under it~~ adopted pursuant to
6 26 this chapter shall be subject to a civil money penalty of not
6 27 more than one five hundred dollars for each violation. The
6 28 commissioner may recover such civil money penalty according to
6 29 the provisions of subsections 2 ~~to~~ through 5. Any civil money
6 30 penalty recovered shall be deposited in the general fund of
6 31 the state.

6 32 Sec. 10. EFFECTIVE DATE. This Act takes effect January 1,
6 33 2010.

6 34 EXPLANATION

6 35 This bill relates to employers and individuals who perform
7 1 labor and wage payment collection.
7 2 In Code section 91A.2, the definition of "employee" is
7 3 amended to include five requirements to determine whether an
7 4 individual is an employee or independent contractor. To
7 5 establish the absence of an employment relationship, a
7 6 putative employer must prove that the employer and the
7 7 individual share an intention to create an independent
7 8 contractor relationship; the employer does not control the
7 9 performance of the individual's services; the employer is not
7 10 responsible for paying the individual's wages; the employer
7 11 does not have the authority to terminate the relationship; and
7 12 the employer is not the entity for whose benefit the
7 13 individual is providing services. Also in Code section 91A.2,
7 14 the definition of "liquidated damages" is amended so that the
7 15 amount cannot exceed twice the amount of unpaid wages and
7 16 cannot accumulate.
7 17 Code section 91A.6(1) and (2) are amended to remove the
7 18 requirement that an employer be notified by the division of
7 19 labor services of the department of workforce development
7 20 before the employer is required to fulfill the requirements in
7 21 subsection 1 relating to employee wage and benefit
7 22 information. Additionally, Code section 91A.6(1)(d) is
7 23 amended to establish a rebuttable presumption that an employer
7 24 did not pay the minimum wage if the employer does not maintain
7 25 proper payroll records.
7 26 In Code section 91A.8(1), a violation of this Code chapter
7 27 occurs any week when an individual employee is not paid wages,
7 28 state taxes are not withheld, or in each week that an employee
7 29 is improperly discharged, discriminated against, or retaliated
7 30 against until compensation is made. In Code section 91A.8(2),
7 31 language that relates to the damages that an employer shall be
7 32 liable for in other instances, is deleted.
7 33 Code section 91A.9(2) has two changes. The first is to
7 34 eliminate language limiting the commissioner's entry into a
7 35 place of employment only in response to a written complaint.
8 1 The second change provides that a complaining employee may
8 2 request confidentiality. The commissioner shall then
8 3 determine whether the commissioner can effectively investigate
8 4 the matter and maintain the employee's confidentiality. If
8 5 maintaining the employee's confidentiality is not possible,
8 6 the commissioner shall proceed only with the employee's
8 7 consent.
8 8 Code section 91A.10(1) is amended by splitting the
8 9 subsection into two paragraphs. The second paragraph's first
8 10 sentence begins with a new clause that states that the
8 11 commissioner can determine whether there is an enforceable
8 12 claim, regardless of whether the investigation began due to a
8 13 complaining employee or at the behest of the commissioner.
8 14 The paragraph also includes rewritten language that states
8 15 that the technical rules respecting the validity of an
8 16 assignment in trust for the claim of wages shall not apply.
8 17 Code section 91A.10(5), which is the subsection covering
8 18 retaliatory actions by employers or others, is expanded to
8 19 cover persons other than employees who act under this Code
8 20 chapter against an employee. A 90-day period is established
8 21 during which any action against an employee or other person is
8 22 rebuttably presumed to be retaliatory. New subsection 6 is
8 23 created in Code section 91A.10 to allow the commissioner to
8 24 maintain a civil action in any court of proper jurisdiction.
8 25 An employer who retaliates against an employee or other person
8 26 shall compensate the injured party an amount set by the
8 27 commissioner or the court, but not less than \$150 for each day
8 28 of the violation.
8 29 In Code section 91A.12, the civil penalty that the
8 30 commissioner may assess is raised to \$500 per violation which
8 31 is deposited into the general fund of the state.
8 32 The bill takes effect January 1, 2010.
8 33 LSB 2067XS 83
8 34 ak/rj/8.1